

Notice of Allowability**Application No.**

10/563,571

Examiner

David T. Fox

Applicant(s)

BISHT ET AL.

Art Unit

1638

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to papers filed 25 January 2010.
2. ☒ The allowed claim(s) is/are 1-22 and 24-31 renumbered as 1-17, 19-23, 24-30 and 18, respectively.
3. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some* c) ☒ None of the:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: ____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date ____.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date ____.
- Identifying Indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date ____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☒ Interview Summary (PTO-413),
Paper No./Mail Date 20100126.
7. ☒ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other ____.

David T Fox
Primary Examiner
Art Unit: 1638

Examiner's Amendment

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

IN THE CLAIMS:

Claims 1, 9, 12, 16, 19-22, 24 and 26-29 were amended as follows.

Claim 23 was cancelled without prejudice.

In claim 1, line 8, --- respectively, --- was inserted after "promoters,".

In claim 9, line 3, "A3," was deleted.

In claim 12, line 2, "bar" was replaced with ---selectable marker---.

In claim 16, part (i), line 1, ---crop--- was inserted before "plants".

In claim 16, part (i), line 3, ---barstar--- was inserted before "fertility".

In claim 16, parts (a) and (b), line 1, ---barstar--- was inserted before "restorer".

In claim 16, part (ii), ---crop--- was inserted before "plants".

In claims 19-22, 24 and 26-29, line 1; "17" was replaced with ---16---.

In claim 20, line 3, a comma was inserted after the first recitation of "gene".

Authorization for this examiner's amendment was given in a telephone interview with Brian K. Lathrop on 29 January 2010.

Informalities

Claim Status

The Examiner confirms that claims 1-7, 9, 11-24, 26 and 28-31 were rejected in the last Office action. The Examiner erred in his indication in the Office Action Summary form of 23 October 2009 that claims 1-7, 9, 11-24, 26, 31 and 38 were rejected; as noted by Applicant in the Response of 25 January 2010, page 8, footnote 1. The confusion is regretted.

Notice of Non-Compliant Amendment

Applicant requests that the Notice of Non-Compliant Amendment, mailed 17 November 2008, be recoded as a "Miscellaneous Communication", asserting that the Examiner vacated said Notice in the Office action of 18 March 2009. Applicant urges that the time between the Notice of Non-Compliant Amendment and the filing of the subsequent amendment will count against Applicant during the calculation of Patent Term Adjustments. See page 9 of the Response of 25 January 2010, Item 4.

However, the Examiner did not vacate the Notice of Non-Compliant Amendment. Instead, the Examiner maintained that the changes in the amendment of 21 August 2008 were indeed substantive, and invited Applicant to address these changes in a subsequent amendment. In the interest of compact prosecution, the Examiner proceeded with the examination of the application. See page 2 of the Office action of 18 March 2009, second through fourth paragraphs. (It is noted that the Examiner *did* vacate the outstanding *Restriction Requirement* in the Office action of 18 March 2009, on the top of page 2.)

Thus, the Examiner cannot request that the Notice of Non-Compliant Amendment of 17 November 2008 be recoded. The inconvenience is regretted. It is also noted that less than one month transpired between the mailing of the Notice of Non-Compliant Amendment, and Applicant's submission of a Supplemental Amendment on 11 December 2008.

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David T. Fox whose telephone number is (571) 272-0795. The examiner can normally be reached on Monday through Friday from 10:30AM to 7:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anne Marie Grunberg, can be reached on 571-272-0975. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/David T Fox/

Primary Examiner, Art Unit 1638

January 29, 2010